

**ADEPT**  
**Legal Commentaries**

March 2003

## **Parliament Activity Review March 3-7, 2003**

March 11, 2003

In the time period covered by the commentary the Parliament examined the following laws:

### **I. Law on modification of the Law on Privatization**

**ADEPT comment:** The law revises almost completely the Law on Privatization passed in 1991 which was applied ever since for the privatization of the state patrimony.

The law defines the goals of privatization: enlarging the private sector; attracting foreign and domestic investments; and boosting securities market and increasing production. The following principles shall govern privatization: social security of the population; transparency of the privatization process; granting preferential conditions to the employees of the privatized companies; and free access to privatization process.

The Parliament decided to change the procedure of privatization at symbolic price of 1 Lei, establishing that it would be applied only in the case of certain companies, which are to be determined by the Government. Also, the Parliament ruled that 3% of the privatization revenues should be transferred to the Privatization Department.

Another provision of the law entitles companies to turn the company into public companies, however the procedure is to be regulated via a separate law.

Although the initial draft provided sanctions for the investors, who failed to meet the assumed obligations, those provisions were later excluded at the insistence of the international monetary organizations, except for the annulment of the privatization contract via a court ruling.

Noteworthy, the modification of this law as well as the adoption of a new law on pre-dispatch inspection were among the requirements set by the international monetary organizations for resuming Republic of Moldova funding.

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### **II. Law on the modification of the Law on the Deputy Status**

**ADEPT comment:** The law allows members of Parliament to conduct research and didactic activity only outside the working hours as specified in the Parliament Regulation. However the said Regulation does not specify the exact number of hours a deputy should work in the Parliament. The only thing the Regulation is clear about are the days of plenary sessions and commission sittings. Specifying the exact number of hours would be in line with the labor law, however would run counter to the constitutional provision, Article 68 (1) obliging deputies to be in the permanent "service of the people".

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### **III. Law on modification and completion of the Penal Code and Code of Administrative Offence, adopted in the first reading**

**ADEPT comment:** Under the law the Code of Administrative Offence is completed with new sanctions for violating the rules of using cash registers.

A new wording of the following articles of the Penal Code is provided: on illegal entrepreneurship; on embezzlement; on illegal deposits in foreign banks; on failure to pay taxes and other binding payments; on transportation, storage and sale of goods not marked with excise stamps, etc.

Needless to say many deputies opposed the amendments due to the fact that the offences referred to were not clear enough and are not likely to improve the situation.

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### **IV. Law on the modification of the Law on Access to Information, adopted in the first reading**

**ADEPT comment:** The Law on Access to Information is completed with provisions related to access to environmental information. The initiative has been criticized by the authors of the Law on Access to Information and of the Law on Access to Environmental Information ("Biotica" NGO).

Environment activists objected to the fact that under the new law, access to environmental information may be denied if making it public would damage the environment, or if the people might wrongly interpret it, and thus lead to panic or other negative events.

Noteworthy, previously the Parliament rejected the draft on access to environmental information on the grounds that it should be incorporated in the Law on Access to Information.

## Parliament Activity Review March 10-14, 2003

March 17, 2003

Council of Europe monitoring mission has influenced to a large extent authorities' agenda. Moldovan authorities have kept some of the previously assumed to enforce PACE resolutions, by adopting a number of legal acts of paramount importance, namely the Law on the Code of Penal Procedure, Law on Prosecution, final amendments to the Law on "Teleradio-Moldova" State Company, which was brought in accordance with the Council of Europe recommendations.

At the recommendation of Council of Europe experts, the Parliament adopted in the first reading amendments to the Law on Deputy Status, Law on Judge Status and the Law on Local Public Administration, which was tailored to the recommendations of the Congress of Local and Regional Powers. The latter would be examined during an extraordinary Parliament session.

An outline of other legal acts examined by the Parliament is provided below.

### I. Code of Penal Procedure.

**ADEPT comment:** Under the Concept of Judiciary Reform adopted in 1994, the Code of Penal Procedure was to be one of the first laws to be adopted immediately after the Constitution. The adoption of the law was among the engagements undertaken by the Republic of Moldova upon joining Council of Europe.

In the eight years to follow, several working groups were established to draft the Code. In year 2000 the Code was adopted in the first reading, however its adoption in the final reading was pending the adoption of a new Penal Code. It is worth mentioning that last year the Parliament adopted a new Penal Code, however its enforcement was conditioned this time on the enforcement of the Code of Penal Procedure, otherwise inconsistencies in the investigation and penal procedures would have arisen.

Last year the Constitution was amended abolishing a level of the judiciary, thus requiring a new procedure of hearing appeals.

The new Code of Penal Procedure includes a series of innovations, namely:

1. **New principles** (free access to justice, freedom to testimony against oneself, freedom to evaluate the evidences, equality of the parties in the trial, prohibition to trial twice for the same crime, as well as other principles of the modern law).
2. Increasing **prosecutor's role** in trials, who is the one to take the decisions.
3. Establishing a standard **term of lawsuits**, comprising both preliminary investigation as well as the trial itself.
4. **De-monopolizing preliminary investigation**, which hence could be conducted by the Ministry of Internal Affairs, Information and Security Service, Customs Department and Center for Fighting Economic Crime and Corruption.
5. Establishing preliminary judiciary control via "instruction judge", who would conduct all the preliminary measures (arrest, collecting evidence, etc).
6. **Increasing the role of the counsel for defense**, who is to enjoy the same rights as other participants to the trial. This aspects needs a thorough consideration as it's importance has been cited for a long time, furthermore international organizations in the field as well as human rights groups have been insisting on it.
7. Establishing the procedure of **release on bail**. The relevant procedure has been debated for a long time, many arguments being voiced either in its favor or against.
8. Establishing **preliminary hearings**, where all the time-consuming matters are to be settled.
9. Allowing for the **confession agreement to be concluded**, hereby the parties agree on procedures, which do not need further evidence, in return for less punishment.

Noteworthy, under the new amendments to the Constitution and CE recommendations, the Code of Penal Procedure should be enforced A.S.A.P., by the end of 2003. However, upon its enforcement several problems would arise such as reforming the existing structures, professional training, and financial and technical matters.

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## **II. Law on Labor Market.**

**ADEPT comment:** The law specifies the measures to be undertaken to provide new workplaces and social guarantees to the unemployed.

A special attention should be given to the incentives provided for establishing new workplaces:

- a. credits from special funds (formed out of revenues to the state budget, unemployment fund, labor market and business development fund, donations from legal and natural entities) shall be offered under preferential conditions for establishing new workplaces;
- b. employers hiring graduates or registered unemployed shall enjoy deductions to the fringe benefits due, over a 1 year period.

Also, the law provides that a specialized agency would train the unemployed on the jobs in demand on the market. A new procedure of paying employment benefits has been established ranging from 50% of the average salary per economy (for a work experience of up to 5%) and up to 60% (for up to 10 years). The funds for the enforcement of the law shall be secured from the social security budget, consequently the benefits would greatly depend on the budget revenues and the quota allotted by the Parliament.

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## **III. Law on amending the Law on Administrative Courts.**

**ADEPT comment:** The following amendments were operated:

1. Disciplinary sanctions to military shall fall within the competence of Administrative Courts.
2. An independent court shall estimate moral damage incurred by an illegal administrative act regardless of the material damage, by taking into account physical or psychical damage incurred, as well as other factors like pleading guilty, circumstances and social status of the plaintiff.

The modifications have been determined by the Resolution of Constitutional Court No. 46/2000 outlawing the said provisions.

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## **IV. Law on Consumer Protection.**

**ADEPT comment:** The Parliament passed a new Law on Consumer Protection in accordance with the international standards and provisions of the Civil Code. In particular the law includes provisions on:

1. Definitions of consumer, producer, seller, service-provider, service, product, quality, abusive commercial practice, counterfeit product, damage, etc.
2. Protection of consumer's safety, health and security by imposing specific requirements to the producers and sellers.
3. Protection of consumer's economic interests via binding contract clauses, guarantee terms, etc. Specifically for the products, which do not indicate the expiry the guarantee period shall be of 2 years.
4. Consumer rights are more clearly defined than in the current law.
5. Informing consumers on the products produced.
6. Sanctions to be applied for the failure to comply with the law.

The enforcement of the law is an important event for the entire society, as each natural or legal entity may be considered consumer. However, a negative reaction from businessmen is to be expected due to the harsh requirements imposed on them.

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## **V. Law on the modification of the Law on Deputy Status, adopted in the first reading.**

**ADEPT comment:** The law excludes the provisions allowing for the revocation of deputy mandate. Currently, Constitutional Court may revoke a deputy's mandate in case of incompatibility or court sentence for a criminal offence.

Needless to say, Council of Europe experts repeatedly stated that the said provisions were anti-democratic and should be revised prior to Moldova taking over the Presidency. Albeit initially experts agreed that such provisions exist in numerous countries of the world.

## Parliament Activity Review March 17-21, 2003

March 24, 2003

Last week was marked by several extremely important events. The first one, was the decision of the Foreign Affairs Department of the breakaway Transnistrian Republic to declare the leadership of the Republic of Moldova, as well as several heads of departments as persona non grata. The style of the notification was rather tendentious and even ironic, as it restated almost the entire the notification of the Moldovan Ministry of Foreign Affairs requesting Transnistrian leaders to be banned from entering EU. Furthermore, Tiraspol leader stated that in case President Voronin sends an official letter, he would allow him to attend the football match scheduled on April 2 and would guarantee his security.

One may say that the negotiation process wouldn't be as easy as outlined in President Voronin's plan. Although several European organizations back up Moldovan authorities, the key decision-makers, i.e. Russia and Ukraine refrain from undertaking any measures in this respect, even if officially they make statements regretting Tiraspol's stance.

On the other hand, the Parliament adopted some very important decisions. Firstly, the Law on Local Public Administration and Parliament Resolution on establishing the election date for May 25, 2003. Secondly, the Parliament passed the much-debated Law on Pre-shipment Inspection. Below is an outline of the most important legal acts passed by the Parliament.

### **Law on Local Public Administration**, new wording.

**ADEPT comment:** The law was adopted in the final reading without any debates despite the very controversial public discussions. Upon the adoption of the law it was announced that it complies with Council of Europe recommendations, especially with regard to financial autonomy, delimitation of responsibilities between the central and local power, as well as administrative control over local government.

Adoption of the said law allowed for establishing the date of general local elections, namely May 23, 2003. It is worth mentioning that according to the Electoral Code:

- a. Central Electoral Commission shall establish electoral constituencies corresponding to the second level administrative-territorial units at least 55 days prior to elections, and district electoral councils 50 days prior to elections. Within 4 days of establishment, district electoral councils shall make public their membership, address, and contact details;
- b. In view of the elections of local councils and mayor, each rayon, special status administrative-territorial unit, city (municipality), village (commune) shall be viewed as single constituency. City (municipal), village (commune) electoral constituencies shall be established by the district electoral councils at least 45 days prior to election day. City (municipal), village (communal) electoral councils are established by the district electoral councils of the second-level administrative-territorial units 40 days prior to election day.
- c. Electoral councils for the election of local councils and mayors shall be divided into precincts, and electoral bureaus shall be formed for each of them.

**Electoral campaign** for each individual contestant shall commence on the date of his/her registration with the Central Electoral Commission or district electoral councils and shall end on the date of his/her elimination from the race or on election day.

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## **II. Law on Pre-shipment Inspection.**

**ADEPT comment:** The final version of the law includes two provisions, previously viewed as being unacceptable by representatives of international monetary organizations. Under the law, two companies entitled to conduct pre-shipment inspection shall be selected based on a tender, whereas the list of goods due to be inspected shall be approved by the Parliament.

Although last week IMF mission stated it would insist on the original draft, Moldovan legislator decided to ignore them, thus endangering the disbursement of further tranches. If authorities fail to convince IMF on the rightness of the draft adopted by the Parliament, then most likely the President would not promulgate the law and would send it for the reexamination together with IMF recommendations. And this because disbursement of further tranches is a

key condition for resuming the negotiations with the Paris Club. However if authorities fail to convince international monetary organizations, they might end up under the backfire of the domestic business, which is very much against pre-shipment inspection and even threatened to stage protest rallies.

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### **III. Law on modification and completion of the Law on Deputy Status.**

**ADEPT comment:** Under the modifications approved, the provisions allowing for the deputy mandate to be lifted upon a court sentence or incompatibility were excluded. Noteworthy, Council of Europe experts insisted on the said provisions in order to bring Moldovan law in line with European standards.

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### **IV. Law on the modification of the Law on Firearms.**

**ADEPT comment:** The law prohibits issuing the license on holding firearm to individuals with previous penal records, as well as to individuals who committed an offence or crime by using firearm, explosives or toxic materials. It is worth mentioning that Parliament Resolution no. 1603 of March 17, 1998 allowed natural entities to possess firearms. The same resolution granted pardon to all persons who legalized the arms in their possession. The impact of the 1998 resolution was never made public, however we may conclude that the initiative failed. An illustration to this effect is the recent amendments to the law.

## **Parliament Activity Review March 24-28, 2003**

April 2, 2003

Once the electoral period commenced, opposition gave up boycotting Parliament session and resumed their legislative activity.

Transit of nuclear wastes on the soil of the Republic of Moldova took the center stage last week. Legislature's intention to regulate nuclear wastes transit spurred protest of environmental NGOs both in the country and abroad (Bulgaria, Ukraine, Russia). Only Romanian NGOs refrained from any comments, probably because Bulgaria and Romania signed a cooperative agreement and the matter was settled long before.

It is worth mentioning that opposition backed environmental NGOs in an attempt to draw public attention to the issue, especially on the eve of elections. An evidence to this is the recent merger of the Environmental Party with Our Moldova Electoral Bloc.

Despite many controversial and tiresome debates, the Parliament managed to examine and pass several important pieces of legislation.

### **I. Laws on the ratification of quadri-Agreement on the transit of nuclear wastes from Kozlodui nuclear power station**

**ADEPT comment:** Before ratifying the Agreement, the Parliament operated a series of amendment to the laws related to environment and transportation, allowing for the transit of nuclear wastes from Bulgaria. Afterwards, the Parliament ratified the Agreement between the Republic of Moldova, Russian Federation, Bulgaria, and Ukraine "On Cooperation in Transporting the Nuclear Wastes between Russian Federation and Bulgaria through the territory of the Republic of Moldova and Ukraine". The Agreement was signed by the parties back in November 1997 and includes provisions:

- Bodies to ensure security measures;
- Transportation to be used;
- Liability for would-be damages in case of accidents (only Russia and Bulgaria);
- Liquidation of the accident consequences (on the expense of the country in which the accident was produced) etc.

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### **II. Law on ratification of Agreement of Ukraine adhesion to the CIS Economic Union**

**ADEPT comment:** Although it took over the Presidency of CIS, so far Ukraine hasn't enjoyed the status of associated-member to CIS Economic Union. And this because initially Ukraine requested a special status and intended to sign a separate bilateral Agreement.

Given that establishment of a Free Economic Zone was at issue during the last CIS Summit, Ukraine's acceptance as an associated-member was another step towards the achievement of the said goal.

Nevertheless, the situation with CIS is quite unclear, especially in the context of the newly established economic community (see the joint statement of Presidents of Russia, Ukraine, Belarus and Kazakhstan).

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### **III. Law on Pension Indemnification**

**ADEPT comment:** The Parliament ruled that pensions (not exceeding three minimal salaries) should be indemnified yearly on April 1. In addition the Parliament decided that the minimal indemnification should not be less than 50 lei, whereas the minimal pension less than 135 lei.

Pension related calculations and payments shall be done no sooner than mid-May, fact that would be fully exploited for electioneering purposes. Moreover, representatives of international monetary organizations voiced their skepticism with regard to authorities' capacity to raise funds to pay for the indemnification, and stated that this decision might raise obstacles in resuming the funding. However, authorities count on a short-term gain, as the creditors would be blamed for obstructing social assistance measures to the population.

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#### **IV. Law on Establishing a Migration Department**

**ADEPT comment:** The establishment of a Migration Department was provided for in the Law on Migration adopted by the Parliament last year. This has raised the number of Government Department's to 29, out of which 8 have been established since 2001.

Needless to say, a series of decisions have been passed recently prohibiting the increase of the number of public employees, even stipulating that the public institutions apparatus may be enlarged only via a Government resolution.

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#### **V. Resolution on the results of control over Customs' compliance with the law**

**ADEPT comment:** The resolution points to serious violations of the legal framework by Customs authorities and outlines a series of measures to be undertaken:

- Periodic reexamination of the methodology used to estimate the value of goods and price calculation;
- Closer cooperation with Republic of Moldova diplomatic missions in view of monitoring the circulation of goods;
- Improving the recruitment, training and activity of Customs personnel;
- Establishing the liability of employees guilty of violations and abuses;
- Close monitoring of investigations and cases involving Customs, etc.

It is worth mentioning that the problem has been debated numerous of times. Although Customs revenues to the state budget have significantly increased, it remains one of the most corrupted and bureaucratic structures in the country. Despite serious concerns over the problem, no attempts are made to reform the entire system.

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#### **VI. Law on the modification and completion of legal acts on the activity of the Center for Fighting Economic Crime and Corruption, adopted in the first reading**

**ADEPT comment:** The examination of the law spurred a lot of controversy among deputies, some of them suggesting to adjourn the adoption until the enforcement of a new Penal Code and Code of Penal Procedure.

Among others the draft modifies and completes the prerogatives of the Center, which are currently provided for in numerous acts, such as Code of Penal Procedure, Penal Code, Fiscal Code, Customs Code, Law on Fighting Money Laundering, Law on the Court of Accounts, etc.

Needless to say the establishment of the Center itself was very difficult. Many experts in the field voiced their skepticism with regard to the need and efficiency of such a structure, which only duplicates the functions of the law enforcement and financial bodies.